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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

22 Cr 00352 (JSR)

5 ANTHONY MCGEE,

6
7 Defendant.

8 Bail Application
-----x

9
10 New York, N.Y.
August 22, 2022
11 3:05 p.m.

12 Before:

13 HON. JED S. RAKOFF,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the
Southern District of New York

18 BY: RUSHMI BHASKARAN

Assistant United States Attorney

19 RUHNKE & BARRETT

20 Attorney for Defendant

21 BY: JEAN DESALES BARRETT
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M8M7MCG

1 THE COURT: Good afternoon.

2 All right. So we're here on a bail application for
3 Defendant McGee.

4 I'll ask each counsel, when they talk, to go to the
5 rostrum because you can take off your mask there and that makes
6 it much easier to understand you. We'll begin with counsel for
7 the defendant.

8 MS. BARRETT: Yes, your Honor.

9 Your Honor, I first would like to identify some of the
10 people who have come today in support of Mr. McGee. His
11 fiancée and future wife is here, Simone Ramirez. Next to her
12 is Jaelynn Johnson, who is the goddaughter who wrote a very
13 lovely letter. In the back of the room, the young child is his
14 godson. There are other family members, other friends to
15 support him. In addition to that, your Honor, Mr. Sonny
16 Miranda who wrote a letter on behalf -- and he's affiliated
17 with the Central Family Life Center -- your Honor, he is here.
18 He has said that not only would he welcome Mr. McGee back to
19 the program -- and he's happy to give your Honor some more
20 information about the program -- in addition to that, he has a
21 job offer, which is the third job offer that he has.

22 There's Mr. Lopez. And then I didn't note in my
23 memorandum that Mr. Morales wrote a letter. On page 15 of the
24 letters, Mr. Morales says that he, as well, would have a
25 position available for Mr. McGee if Mr. McGee were permitted to

M8M7MCG

1 be free on bond.

2 THE COURT: I'm delighted to have all those folks
3 here. Thank you very much for bringing them.

4 MS. BARRETT: Would you like to hear from Mr. Miranda
5 about Mr. McGee's experience with his --

6 THE COURT: I think maybe at some point, but let's set
7 the stage, so to speak.

8 MS. BARRETT: Sure.

9 Your Honor, my focus here is on the language of our
10 Second Circuit that the Bail Reform Act presumes release and a
11 small, very small, identifiable group of individuals should be
12 incarcerated. I understand, and Mr. McGee understands that his
13 criminal history is something that weighs against him in this
14 particular situation. But I believe that all of the letters
15 and the willingness of people to sign a bond for him -- six
16 different people are willing to sign a bond -- all of those
17 promises for work, the assurance of his probation officer from
18 the City of New York, and the assurance from Mr. Miranda and
19 the manager of the Central Family Life Center, all attesting to
20 Mr. McGee's character and his change in his life.

21 THE COURT: Bear with me one second. I'll tell you
22 why in a second.

23 (Pause)

24 THE COURT: The reason I interrupted, I don't think I
25 ever saw the -- presumably, there was a pretrial officer's

M8M7MCG

1 recommendation that was made to Magistrate Aaron when this case
2 was first presented, but I don't think I've seen that.

3 Do either counsel happen to have a copy of that?

4 MS. BARRETT: We are not allowed to take them.

5 MS. BHASKARAN: Same, your Honor. The pretrial
6 officer recommended detention.

7 THE COURT: Yes. But I would have liked to have seen
8 what he had to say.

9 THE DEPUTY CLERK: I'm going to call the magistrate.
10 Give me a second.

11 THE COURT: Go ahead. I'm sorry for the interruption.

12 MS. BARRETT: Sure.

13 I neglected to identify that Daquan McGee, who is
14 Mr. McGee's younger brother. He also wrote a letter of
15 support. I think the letters from Daquan and their sister,
16 Melissa, are telling that they acknowledge his history, they
17 acknowledge that he has been in a bad place, but they say he's
18 in a good place now, and they want him to continue to be in
19 that good place. They all believe that Mr. McGee has gone
20 through a rehabilitative experience. And it would be difficult
21 to ignore the feelings of all of these people and their
22 willingness --

23 THE COURT: What am I to make of anything -- and maybe
24 the answer is nothing -- of the fact that Mr. McGee was one of
25 numerous defendants in this case who sent letters to the Court

M8M7MCG

1 saying that they were overriding their counsel's advice and
2 were asking that no pretrial motions be made and that the
3 matter proceed more quickly to trial?

4 What struck me about those letters is they were all
5 virtually word for word the same, suggesting that the
6 defendants in this case are still in close coordination. Now,
7 that may be perfectly legitimate, but it seems, perhaps, a
8 little inconsistent with the notion that Mr. McGee has turned
9 his life around and is on a different path.

10 MS. BARRETT: Your Honor, we have been over this in
11 detail. It is my understanding that Mr. McGee wants to
12 withdraw that letter, that he personally did not send it.

13 THE COURT: Well, if that's true, I think I need to
14 inquire of him directly --

15 MS. BARRETT: Sure.

16 THE COURT: -- if you have no objection to it.

17 MS. BARRETT: I have no objection, your Honor.

18 THE COURT: All right. So, Mr McGee, you know the
19 letter I'm talking about?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: You're withdrawing it?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: You say you didn't send it?

24 THE DEFENDANT: My fiancée and me had a discussion
25 about said letter and we were under the impression at the time

M8M7MCG

1 that it was one of a good decision, but I didn't have a visual
2 look at it.

3 THE COURT: So, how had this letter come to be
4 written?

5 THE DEFENDANT: It was given to her.

6 THE COURT: Given to?

7 THE DEFENDANT: My wife.

8 THE COURT: Who then passed it on to you?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you know who gave it to her?

11 THE DEFENDANT: No.

12 THE COURT: Well, she's here, yes? Let's ask her.

13 MS. BARRETT: Your Honor, I don't think it was ever
14 passed to Mr. McGee, just to clarify that.

15 THE COURT: I'm sorry?

16 MS. BARRETT: I believe the letter was never passed to
17 Mr. McGee. It was not mailed from --

18 THE COURT: Oh, I'm sorry, it was never --

19 THE DEFENDANT: It was never presented to me. I spoke
20 to my wife about it. She felt comfortable, so I agreed for her
21 to push it.

22 THE COURT: So maybe counsel can clarify this.

23 From your discussions, what is your understanding of
24 exactly what occurred here?

25 MS. BARRETT: My understanding is that Ms. Ramirez

M8M7MCG

1 discussed this letter, which she received from someone else.
2 She discussed it with Mr. McGee. They were under a very
3 different understanding as to the significance of this letter.
4 Unfortunately, they didn't run it by me first, which would have
5 been good. But they both have since conferred after both of
6 them talking to me. I spent a good deal of time discussing
7 this matter with them and they both agree that it was a
8 mistake.

9 THE COURT: So, two different questions.

10 Back to you, Mr. McGee. First, are you withdrawing
11 that letter and the request made in that letter?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Second, what is your understanding as to
14 who that letter originally came from?

15 THE DEFENDANT: I believe it came from Mr. Smith.

16 THE COURT: Okay. All right. Go ahead, counsel.

17 MS. BARRETT: Thank you, your Honor. I'm glad we
18 could clarify that matter.

19 So, your Honor, I guess what I was addressing the
20 Court about was the support of the members of the family, the
21 support of friends, the support of coworkers, the support of
22 people who supervise him, including the probation officer and
23 Mr. Miranda who supervised him at the Central Family Life
24 Center. That program is called True 2 Life. It's my
25 understanding that Mr. Miranda was hoping that Mr. McGee could

M8M7MCG

1 take on a mentorship role as a person demonstrating that he has
2 turned his life around.

3 Your Honor, with regard to the other -- it was one
4 other thing that I really wanted to focus on, and it just flew
5 out of my head.

6 THE COURT: Being considerably older than you are, I
7 understand that completely.

8 MS. BARRETT: You flatter me, your Honor.

9 THE COURT: Anyway, why don't we go to the government
10 and I'll give you a chance to respond in any event.

11 MS. BARRETT: Thank you.

12 MS. BHASKARAN: Thank you, your Honor.

13 I know your Honor now has some familiarity with the
14 nature of the case and the allegations in the case, so I'll be
15 brief in this description.

16 THE COURT: Well, forgive me for interrupting.

17 Do I understand that the government does not contend
18 that Mr. McGee is a flight risk and is basing this solely on
19 danger to the community?

20 MS. BHASKARAN: That's correct, your Honor.

21 THE COURT: There is a reference made to his prior
22 record, but that's one of the reasons -- I'm sorry, I didn't
23 see the pretrial --

24 THE DEPUTY CLERK: It's coming.

25 THE COURT: All right. Maybe the government

M8M7MCG

1 presumably has the information.

2 What is his prior record?

3 MS. BHASKARAN: It's extensive, your Honor. I believe
4 it demonstrates a continuous pattern of misconduct.

5 So, to summarize it, his first criminal conviction was
6 in February of 2008. That was a conviction for felony robbery.
7 He received one to three years'.

8 THE COURT: How old was he there?

9 MS. BHASKARAN: I believe he was 18 years old.

10 At the same time, on April 9 of that same year, 2008,
11 he was also convicted of assault in the third degree. I
12 believe that was a misdemeanor. Perhaps that was wrapped up
13 with the other case, but he received a conditional discharge
14 for that case. He was released from prison in October 2010.

15 He's next arrested in April of 2012, so about a year
16 and a half later. The plea in that case is to criminal
17 possession of a weapon in the fourth degree. He received a
18 short sentence there, I believe. There's also some bench
19 warrants that were associated with that offense. The next
20 arrest after that is October 16, 2013. He ultimately pleads
21 guilty to robbery in the third degree. Again, that's his
22 second felony robbery conviction. This time he gets a term of
23 imprisonment of two to four years. There are bench warrants
24 associated with that conviction as well. I believe then he's
25 released from prison in June of 2016 and and his following

M8M7MCG

1 arrest after that is in August of 2019. The plea there is to
2 assault in the third degree. Again, there's notations of bench
3 warrants there, and he received a conditional discharge.

4 The next arrest, most recent arrest, not including the
5 arrest from the federal offense here, was from March 4, 2021,
6 so a year and some change ago. There, he pleaded guilty to
7 disorderly conduct. The arrest charges were for something more
8 serious, criminal possession of a weapon, but, obviously, we
9 would focus here on the plea, which was just disorderly
10 conduct.

11 THE COURT: Well, maybe I missed something.

12 Although, there were those very serious robbery
13 charges, do I understand, if I followed you correctly, that the
14 only felony pleas or convictions since 2013 were one for which
15 you received a conditional discharge and one that was for
16 disorderly conduct?

17 MS. BHASKARAN: That's correct. So the last felony
18 conviction was from -- he was arrested for that offense on
19 October 16 of 2013.

20 THE COURT: Well, obviously, that's a serious record.

21 Why isn't that at least arguably consistent with the
22 defense argument that is independently supported by the various
23 things they've submitted that he has basically turned his life
24 around, unless we look at the events that he's charged with
25 now, which we're going to get to in a minute?

M8M7MCG

1 But my point is not to minimize those two subsequent
2 matters, but they do not seem at the same level of his earlier
3 misconduct.

4 MS. BHASKARAN: I agree, your Honor. There's been
5 some diminution in the degree of his criminal convictions as
6 he's gotten older. But, again, I think these prior criminal
7 convictions are very serious. The fact that he's continued to
8 have arrests for conduct that is violent in nature should be
9 troubling. The fact of the matter is that --

10 THE COURT: Well, do we know much about the facts of
11 the disorderly conduct?

12 MS. BHASKARAN: I don't, your Honor, other than I know
13 that the arrest charges included criminal possession of a
14 weapon. And for the charge before that, the August 29 arrest,
15 the plea there was for assault in the third degree.

16 THE COURT: Okay. Now, he is listed in the
17 indictment, if I recall correctly, as number three of the
18 various defendants. I assume the indictment basically tracks
19 the government's view of approximate culpability, yes?

20 MS. BHASKARAN: I think that's right, your Honor.

21 THE COURT: So the defense says in their submission,
22 for which I am very grateful, that he is not alleged to have
23 been present for or participated in acts or threats of violence
24 in terms of the pending indictment; is that correct?

25 MS. BHASKARAN: Yes, your Honor. It is difficult to

M8M7MCG

1 pinpoint each and every participant in the numerous acts of
2 violence that occurred in this case. There are numerous acts
3 of violence. Victims could not always identify their
4 assailants because these events happened very quickly. Someone
5 runs up to them, sometimes multiple people run up to them and
6 they are sucker punched to the ground. And all of these
7 assaults are unprovoked. And there are insurance investors
8 going to homeowners --

9 THE COURT: Well, I don't mean to minimize the overall
10 allegations and the indications on the face of the papers that
11 they involve both violence and threats of violence of a very
12 serious nature, but what I'm trying to focus in on is
13 Mr. McGee's involvement.

14 So, what led the government to place him as number
15 three in the indictment hierarchy?

16 MS. BHASKARAN: Your Honor, so our investigation
17 included numerous interviews. It also included wire taps on
18 two of his codefendant's phones, Mr. Jatiek Smith and Sequan
19 Jackson. We also recovered a significant amount of evidence
20 from various other phone extractions. Mr. McGee was
21 intercepted on numerous occasions on the Title 3 where it's
22 very clear that he is fully aware of the tactics that this
23 enterprise used, including the use of this extortion of
24 rotations systems where companies that wanted to stay in the
25 industry could only do so if they made these extortion payments

M8M7MCG

1 to First Response. It is amply clear from those interceptions
2 that he's very much a part of administering that rotation
3 system.

4 THE COURT: Remind me of the event you're referring to
5 now, such as, the evidence from the wire tap relates to what
6 period of time?

7 MS. BHASKARAN: This would be from 2020. I think we
8 started from October 2020 from June of 2022.

9 THE COURT: Okay.

10 MS. BHASKARAN: In addition, we have a chat where
11 Mr. McGee and several codefendants are discussing a situation
12 where a competitor was trying to take business away from First
13 Response. Mr. Smith, Jatiek Smith -- there's two Smith
14 defendants in this case -- instructs Mr. McGee to go pull up on
15 him and show some authority.

16 Later, Jatiek Smith says that someone should go slap
17 the competitor. McGee's response to the comment about slapping
18 is, "It's whatever you want done." And I think there, there's
19 a fair inference that can be drawn that he understands the
20 violence that is being used by the enterprise to control the
21 industry and he's fully supportive of the violence that's being
22 used.

23 The only other point that I'll note, your Honor, at
24 least at this juncture, unless there's further questions, is
25 that Mr. McGee is, from what I understand, a self-professed

M8M7MCG

1 member of the Bloods gang, which we all know is a very violent
2 street gang. Many members of the enterprise that were charged
3 were also members of the Bloods. And I think that fact is
4 important for the Court to consider in assessing whether there
5 are any conditions or combination of conditions that could
6 address the danger that they possessed.

7 But from the government's perspective, what we think
8 is a very significant criminal history, his gang membership,
9 and his participation in this offense which occurred while he
10 was on probation suggests to us that there aren't any
11 conditions that would reasonably protect against the danger
12 that he possesses.

13 THE COURT: All right. Thank you very much. Let's go
14 back to defense counsel.

15 MS. BARRETT: Well, your Honor, what I heard the
16 government saying was it's difficult to pinpoint what
17 Mr. McGee's role was in this so-called administration of
18 violent acts. Difficult to pinpoint sounds to me like there
19 there's no proof that he was involved in physical violence
20 against anybody.

21 THE COURT: Well, that may well be true based on what
22 I've heard so far. But on the other hand, they indicate that
23 he had knowledge and was, at a minimum, fully on board in the
24 use of violence.

25 MS. BARRETT: Well, let me put it this way. We're

M8M7MCG

1 here with the presumption of innocence. That's the
2 government's interpretation of a conversation in which we had
3 no access and no ability to explain or determine context, what
4 was the mood of the individuals engaged in this conversation.
5 All we have is an allegation of some words on the part of Smith
6 to Mr. McGee and Mr. McGee saying something that sounds to me
7 particularly gratuitous.

8 So, what I'm saying here, Judge, is --

9 THE COURT: I don't think it has to do with the
10 presumption of innocence. Because while I hold that very dear
11 to my heart, the immediate question is a factual one, and it's
12 one where the standard is essentially preponderance. And it
13 is, in this particular case, whether him making that statement
14 that was just quoted, it was more likely than not that he was
15 approving the use of violence.

16 Now, you are quite right that you haven't had the
17 extensive discovery that the government is in the course of
18 providing that may shed further light on this. That, of
19 course, was one of the reasons why I think Mr. McGee has
20 exercised excellent judgment in withdrawing his letter.
21 Otherwise, if I were to follow the path suggested in those
22 letters, we might have a trial in this matter without defense
23 counsel having more than the most trivial idea of what the
24 government's proof was, whereas under the present schedule, the
25 government is required to produce extensive discovery that

M8M7MCG

1 defense counsel would then have a chance to look at.

2 But my point is this: As in every bail hearing, it is
3 always subject to further consideration if you discover new
4 information later that casts a different light. But I, like
5 every judge in this point, have to make a determination as to
6 what I think is more likely than not about any given factual
7 assertion that is being made. And it does sound to me that
8 it's more likely than not, on the limited amount of information
9 that I have, that it was acquiescence in a proposed act of
10 violence.

11 Why shouldn't I draw that conclusion?

12 MS. BARRETT: Because that conclusion was the
13 conclusion that -- if you take the context there and the words
14 without putting it into the context of an entire conversation,
15 it's not fair to make that determination and to adopt the
16 government's version of what that conversation was about.
17 Words are words. Very different.

18 THE COURT: Well, let me ask a broader question.

19 MS. BARRETT: Sure.

20 THE COURT: And I think this is really one of the
21 issues that is at the heart of this application.

22 By the way, I commend the defense for their very
23 excellent presentation, both in writing and now orally in this
24 bail application. But having had the pleasure and privilege of
25 Ms. Barrett's presentations before, I wasn't surprised that it

M8M7MCG

1 was a terrific job.

2 MS. BARRETT: Thank you, your Honor.

3 THE COURT: But here is what I think is the problem is
4 that you face. It's, if you will, two inconsistent pictures.
5 We have, on the one hand, your version of what's happened to
6 Mr. McGee supported not just by family members, although, they
7 are always important to the Court, but by independent persons
8 as well, saying this guy not only has turned his life around,
9 he's really become a very helpful participant in the various
10 programs he's involved in and so forth, and he has several
11 employment prospects. What good will it be to lock him up for
12 X number of months when he has shown his ability to do things
13 the right way?

14 On the other hand, we have the government saying,
15 forget about the prior criminal history. Although, that's not
16 irrelevant, obviously. But what we have the government saying
17 is based on their investigation of the facts in this very case,
18 that within a very recent couple of years or so, he was
19 directly involved in a very, very serious racketeering
20 conspiracy. So that's, I think, the clash that needs to be
21 resolved.

22 MS. BARRETT: I think your Honor is capable of
23 resolving that clash because I am very familiar with the Court
24 as well. But I would also point out that it has to be if your
25 inclination was the decision must be release.

M8M7MCG

1 THE COURT: I understand that, and I agree with that
2 completely. But usually, the facts are not 50/50, they're
3 usually at least 51/49.

4 MS. BARRETT: Right.

5 THE COURT: One of the things that trouble me --
6 that's why I asked the question earlier -- is if he really had
7 turned his life around in the way that you're suggesting, why
8 was he directly, or as it seems, indirectly participating in
9 this letter campaign that was presented to the Court, which
10 suggests a degree of continuing association with the people,
11 many of whom the evidence is very strong.

12 MS. BARRETT: Your Honor, I think -- and I'm not going
13 to ask anybody to back up my thoughts here -- but my intuition
14 or inference based on what I know is that there may have been
15 pressure applied to Ms. Ramirez in a way that led her to
16 believe that it would be in Mr. McGee's best interest to go
17 along with this letter writing campaign.

18 THE COURT: So, now, if I do grant bail, in these
19 kinds of situations, one of the normal conditions is that the
20 defendant have no further contact with anyone involved. And I
21 would interpret that to mean not just direct contact, but
22 indirect contact, other than through counsel, of course.

23 So if, for example, I received another letter of that
24 nature from someone in his family who had shown it to Mr. McGee
25 and then sent it to the Court -- I'm making this up as a

M8M7MCG

1 hypothesis -- would it not be proper at that point for me to
2 feel that he had violated the conditions of release and revoke
3 bail?

4 MS. BARRETT: Absolutely. There is no question about
5 that.

6 I think that Mr. McGee and Ms. Ramirez fully
7 understand the Court's position with regard to this, and they
8 regret deeply that they became involved with this without
9 discussing it with counsel. They understand that there's
10 absolutely no contact with anyone associated with the other
11 defendants in this case.

12 THE COURT: Now, if you know and if you want to tell
13 me, is he still a member of the Bloods?

14 MS. BARRETT: Your Honor, there's a thing about gangs
15 that I'm sure the Court is aware, it's that you can be
16 categorized in that fashion unless you actually take some sort
17 of affirmative action that's required. You don't -- it's sort
18 of like once a Blood, or once a whatever, Trinitarios, or once
19 this, once that, you're always that, no matter what. He could
20 be 100 and they could still be saying that about him.

21 So, I can tell you that he is not engaged with any
22 kind of criminal activity with regard to their gang.

23 THE COURT: So if I were to release him, again, one of
24 the conditions, it seems to me, would have to be that he not
25 associate with anyone that he knows is a member of the Bloods.

M8M7MCG

1 MS. BARRETT: Certainly.

2 THE COURT: That would cover quite a lot of people, I
3 suspect, in his particular venue.

4 MS. BARRETT: Yeah, well, I believe that if he were
5 released, he would like to reside with Ms. Ramirez in Newark.
6 So he would be away from the area where he, as a very young
7 man -- and by the way, he was 17 for that first arrest -- and
8 as a very young man became involved because of where he was,
9 because of his family's economic circumstances, the fact of
10 growing up in a single-parent home. All of those things, we
11 know, expose young men to very negative influences. He has
12 overcome that. He is working very hard to take care of his
13 family. He takes care of his children, the two youngest
14 children every weekend. He obviously is a mentor and support
15 to Jaelynn Johnson, who is here. His family is willing to
16 support him. Everybody is willing to stand by. Everybody
17 understands that one step over the line would mean
18 incarceration again, should the Court grant his release. But I
19 do want to emphasize that.

20 I know the Court knows this, because I know the Court
21 sat through a capital case and has heard experts testify about
22 aging out and that process of basically growing up and how that
23 doesn't really happen when you're automatically 18 years old.
24 It takes a while for that brain to start making good decisions
25 and functioning well from an executive functioning point of

M8M7MCG

1 view.

2 THE COURT: Give me, again, the bail conditions that
3 you would propose.

4 MS. BARRETT: Proposing electronic monitoring with
5 home detention so that he could work, and that he would be
6 residing with Ms. Ramirez on South 11 Street in Newark.

7 By the way, your Honor, I also have -- and I'll just
8 tell you about it and I won't necessarily burden the Court with
9 more paperwork, but Ms. Ramirez canvassed her neighborhood and
10 had her neighbors sign a letter saying that they welcome
11 Mr. McGee's return to that community in Newark. He would be
12 away from all of these people. Also, there are six individuals
13 who are willing to sign a bond and --

14 THE COURT: How much of a bond are you proposing?

15 MS. BARRETT: I would think 250,000 would be an
16 appropriate bond.

17 THE COURT: Cosigned by?

18 MS. BARRETT: By Ms. Ramirez. Jon Lopez would be
19 signing it. Two of the individuals are managers at Duane Reade
20 where Ms. Ramirez is employed, and they've come to know
21 Mr. McGee through that. Mr. Marrero. There's one who is
22 employed in Walmart in Newburgh and is a salesclerk.

23 Obviously, these are not people who are wealthy, but
24 as I pointed out in the letter, they understand the
25 significance of making this kind of sacrifice. And the moral

M8M7MCG

1 suasion involved is really important. I think it's important
2 for Mr. McGee.

3 He hasn't received a copy of the letters because mail
4 is what it is, but I have read some of the letters to him this
5 afternoon and he was brought to tears with gratitude for what
6 people are willing to sacrifice for him.

7 THE COURT: All right. Let me go back to the
8 government. First, anything you'd like to say, and then, also,
9 I have a question for you.

10 If I were to release Mr. McGee on bail, are there any
11 other conditions that you would propose?

12 MS. BHASKARAN: Yes, your Honor.

13 I believe the other defendants in this case who have
14 been released have a condition to have no contact with certain
15 industry participants. I don't have the precise details of how
16 we put that in effect, but I believe we provided pretrial with
17 a list of certain companies in the industry that the defendant
18 would not be able to contact.

19 THE COURT: Okay. That's important.

20 Well, I am leaning that way. So if there's something
21 else you want to say that you think might change my mind, now
22 is the time to say it.

23 MS. BHASKARAN: I don't know that I have any
24 additional points, your Honor, other than to say that it is the
25 government's view that detention is appropriate here and that

M8M7MCG

1 is very much driven by the criminal history, the prior gang
2 membership, and his acquiescence to violence and extortion in
3 this case.

4 THE COURT: Those are all important points and well
5 stated.

6 This is, as you might imagine, a somewhat close call.
7 Although, I don't think it's determined by presumption, I am,
8 of course, fully aware and devoted to the provision of our
9 Constitution that favors the release on bail. But to my mind,
10 it always has to be decided on an as complete and careful
11 analysis of the specific facts as the Court can look at at this
12 still relatively early stage in the litigation.

13 The government does not contend that this defendant is
14 a flight risk, and it seems clear from the support he's
15 received that that's very unlikely. Although, I will still
16 impose, when we get to the provisions, a bond, because I think
17 that has its own moral suasion of a more general sort.

18 I am struck by the fact that Mr. McGee, despite his
19 participation in the past in serious criminal activity, does
20 and has given signs in maturing in just the way defense counsel
21 mentioned. It's always difficult for someone who has joined a
22 gang at an early age and looked to the gang for leadership and
23 support to suddenly come to the realization that that is the
24 path to ruin, to a lifetime of incarceration at one point or
25 another, to the disregard for the family and other people who

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1 place such great faith in him. That realization comes slower
2 to some and faster to others, but I do think defense counsel
3 has made a persuasive showing that Mr. McGee is moving in that
4 direction in meaningful ways. And it is impressive that that
5 position is supported not just by family, but by prospective
6 employers, by participants and programs in which he's played a
7 role and so forth. This is as full of support as one could
8 imagine in these circumstances.

9 I'm also persuaded that the evidence so far presented
10 to the Court of Mr. McGee's own involvement in violence or even
11 acquiescence in the violence of others is modest at best
12 compared with some other defendants in this case. It is quite
13 modest. So it seems to me that there is a set of conditions
14 that reasonably could warrant Mr. McGee's release and assure
15 against further danger to the community.

16 Although, I want to emphasize to Mr. McGee that even
17 the slightest violations of the conditions I'm about to set
18 would almost certainly change my mind and result in your bail
19 being revoked. But I'm sure you understand that; yes?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: So the first condition is that the
22 defendant will be subject to electronic monitoring as
23 determined by the pretrial services, and that he will reside,
24 at all times, at Ms. Ramirez's residence in Newark, as I
25 understand it, except when he receives prior pretrial approval.

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1 Now, this could be for employment, for example, it could be for
2 medical purposes, it could be for meeting with counsel, but it
3 always requires prior approval of pretrial services. If I ever
4 hear, for example, oh, gee, it was an emergency, I just had to
5 leave, so I didn't have time to call pretrial services, or, I
6 couldn't reach pretrial services, forget it; I would revoke
7 bail. So any release requires pretrial services' prior
8 approval.

9 Third, the defendant is restricted to the District of
10 New Jersey and the Southern District of New York. Fourth, the
11 defendant will not associate with anyone who he knows to be a
12 member of the Bloods, and/or with any member associated with
13 any of the defendants in this case, and/or with anyone who he
14 knows has been previously convicted or was charged with pending
15 crimes. Mr. McGee has so many good people who support him that
16 he doesn't need to worry about being lonely.

17 Fifth, he will not associate with companies, and I'll
18 adopt by reference and we'll get the exact wording from the
19 previous bail conditions regarding that provision. I'll leave
20 that for counsel for both sides to work out. Finally, he must
21 provide a \$300,000 recognizance bond cosigned by at least four
22 financially responsible people. And the government will make
23 the initial determination as to whether that has been met.

24 Now, it follows from that last condition that he will
25 not be released today because we'll have to put all these

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1 arrangements in place. But if there are any difficulties
2 expeditiously putting all of this into place, counsel should
3 jointly call the Court and we'll make sure this gets expedited
4 so that Mr. McGee shall be released in the next few days, even
5 though he can't be released today.

6 All right. Is there anything else anyone else wants
7 to raise at this time?

8 MS. BHASKARAN: No, your Honor.

9 THE COURT: Defense?

10 MS. BARRETT: No, your Honor.

11 THE COURT: Very well.

12 (Adjourned)